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NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

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EFFECTIVE
DECEMBER 1, 1986
NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF MEDICAL EXAMINERS
DOCKET NO.

IN THE MATTER OF THE SUSPENSION
OR REVOCATION OF THE LICENSE OF

MARTIN RICCIO, D.C.
License No. #2307

TO PRACTICE CHIROPRACTIC IN THE
STATE OF NEW JERSEY

ADMINISTRATIVE ACTION

FINAL ORDER

This matter was opened to the New Jersey State Board of Medical Examiners by the Attorney General of New Jersey, by Joan D. Gelber, Deputy Attorney General. It appears that Respondent, who practices under the name of the Riccio Clinic of Chiropractic at Kearny, 267 Kearny Avenue, / New Jersey has undertaken to provide chiropractic services to two patients, Mr. K.B. and Mr. R.M.R. Serious questions as to the propriety of that care have been brought to the attention of the Board, resulting in an appearance by Respondent on June 25, 1986 to discuss the matter.

It appears that on March 14, 1984, Mr. K.B., age 62 and retired, sought treatment for chronic low back pain of some thirty

years duration worsened by bending or strain. The patient reports that on the first visit, Respondent discussed the patient's complaint, and without asking the patient to remove any clothing other than a shirt and undershirt, took two x-rays and administered a chiropractic adjustment. The patient paid \$50 cash for the cost of the x-rays. On one subsequent visit March 17, the patient was treated by Respondent's assistant, "Dr. Brown." On all other treatment visits of March 15, 16, and 19, Respondent merely applied an instrument (which the patient described as like a spring-loaded hypodermic needle with a plunger) on the back over the patient's clothes, giving what felt like a "light tap." The patient reports that Respondent initially told him the back problem could be relieved in a few visits, but after learning that bills would be submitted to Medicare, Respondent informed K.B. that approximately 90 visits would be needed. K.B. says he was not informed that Medicare would not cover the cost of x-rays in these circumstances.

Respondent states that at the time of the first visit the patient was in severe pain and antalgic; that an examination was performed and AP and lateral lumbar x-rays were taken. He says he urged the patient to come for daily care and intended to reevaluate frequency of visits after five adjustments. He claims he informed the patient at the outset that a "90-day period of time" might be needed due to the chronicity of the problem. He contends that the patient's description of the matter is "absolutely false."

Respondent's patient folder contains a preprinted (but unsigned) "Irrevocable Assignment, Lien and Authorization Insurance

Benefits and Attorney" containing some sweeping abdications of patient rights. Review of the file discloses a "Report of Findings" in which Respondent lists in nonprofessional terms the patient's complaint and a finding that there was a "bone out of position" and a "Time Commitment: 90-days - every day until relief - then reevaluate." There are only two other treatment-type pages in the file: a memo page which repeats the patient's complaint and refers to arthritis, and a photocopy of the same type of memo paper, undated and unidentified as to patient, describing conclusions of range of lumbosacral motion appearing to be normal, Kemp's test bilaterally, positive LaSegue's and Braggard's tests, and x-ray reference: "x-ray indicates spinal misalignment of lumbar area and palpation along with leg checks indicate subluxation of the lumbar area and sacral area. Diagnosis -sciatica." The outside cover of the folder is used to list billing information. An accompanying note provided by Respondent to the Board defines his billing abbreviations and, thus translated, there are five office visits including spinal manipulation with two of them being "extended office visits," and with NO charge listed for the first visit examination. The definition page states that the patient's full diagnosis is "strain/sprain injury to the lower lumbar region with sciatica." The remaining portion of the file contains a Medicare claim form charging \$40 for the examination and \$50 for the x-rays, and an assertion that the patient paid nothing, and claims for \$20 for each of four spinal manipulations, totalling \$170.

At the inquiry, Respondent's x-rays were examined. He acknowledged that they "came out very bad." Although they were grossly underpenetrated and non-diagnostic, he billed them, nevertheless, explaining that the failure was in the equipment and he had not known of it until taking these March 1984 films. It was noted that he never credited the patient with the \$50 paid by the patient for the films; moreover, he billed the insurer for \$20 each of the final two visits but recorded billing to the patient as \$25 for each of those visits. His total charges listed on the folder are \$140, but total charges billed to Medicare are \$170.

Respondent claims he performed numerous tests on the patient although there is no indication whether his undated positive findings were on the right or left side or at what level. It was pointed out to him that a "leg check" cannot provide a diagnosis for sciatica; that he listed absolutely no progress notes; and that a patient of this age, with poor quality x-rays, should have been given a much more thorough work-up.

Respondent acknowledged that considering the poor quality of the x-rays, it was inaccurate to state that "x-ray indicate ..." and these films were unusable and indicated nothing. He identified the instrument he used on Mr. K.B. as an "activator" and States
care may be necessary for a 90 day period of time.

But while he now claims that the patient suffered a posterior subluxation of L-5, a retrolisthesis, such a diagnosis cannot be made without a proper x-ray.

The Board finds that Respondent's patient record for Mr. K.B. is grossly inadequate to show what, if any, examination was performed and findings made, or the course of subsequent treatments. To the extent the examination consisted of the list in Respondent's record, the examination was negligently incomplete in the circumstances of this patient's complaint. The x-rays are seriously deficient. Further, in the absence of an appropriate examination and of adequate x-rays, the practitioner could not possibly have arrived at the diagnosis he listed on the Medicare form.

Another patient has complained as well. Mr. R.M.R. consulted Respondent December 13, 1983 for sharp pain in the left buttock radiating down the left leg, apparently resulting from performance of a household chore. The patient reports that Respondent stated that RMR's spine was crooked and if the problem was not corrected, the man would be confined to a wheelchair. X-rays were taken. The patient also showed to Respondent a swollen and inflamed foot, which Respondent allegedly said was a side effect of the pinched nerve causing the back pain. The patient was advised to come for treatments three times/week for a minimum of four months. During one treatment session, RMR realized that Respondent was treating the wrong side of his back and moreover, after looking at the x-rays, was unable to determine which was the right and left side of the film. Within two weeks of the start of treatment, the foot was so painful that RMR could not put on his shoe; he claims that Respondent continued to insist the pain

was caused by the same pinched nerve. On December 23, 1983 the patient consulted a podiatrist and learned that in fact he had an infection in the foot which, after a short time, was successfully treated. RMR continued to receive chiropractic treatments from Respondent until April 3, 1984 without receiving any relief. It is further reported that on the later visits, Respondent's treatments consisted of applying a pointed, plunger-type instrument on RMR's leg and on the bottom of his shoe. The patient was asked to remove only his shirt and undershirt when the x-rays were taken, but was not asked to remove any clothing - not even his shoes - during the remainder of the treatments including application of the activator instrument to the bottom of his shoe. The patient denies all of the explanations and justifications claimed by Respondent in the latter's letter to the Board dated May 25, 1984. After April 3, the patient requested his records and x-rays so that he could consult another chiropractor. The second chiropractor found that Respondent's two x-rays were of such poor quality as to be unreadable, and had to send the patient for new ones.

We note that Respondent had claimed that his x-rays for patient K.B. (discussed above) were faulty due to machine error appearing for the first time in 1984. However, the Board notes that Respondent's x-rays for patient RMR taken in December 1983 were grossly overexposed and deficient (although only one was totally non-diagnostic), and it is therefore not credible that the fault lay in the machine. RMR's films were billed as "diagnostic x-ray \$30." The bill also charges for "physical therapy" totalling

\$30. Total billings to the patient RMR and to the insurance carrier for the three and one half months of treatment during 45 visits is \$1,051 of which at least \$771.40 was paid.

Here, too, the Board concludes that seriously inadequate examination was performed and findings, if any, were improperly recorded. There was no justification for the extent and frequency of visits or for the treatment applied to the foot and the shoe. Further, failure to refer the patient for appropriate treatment of his foot condition was negligent, and the representation that the swollen foot condition was referable to a chiropractic problem was grossly misleading and constitutes professional misconduct.

Respondent also admits placement of newspaper advertising in which he represents himself as Dr. Riccio without any indication of professional degree, despite the requirement of N.J.S.A. 45:9-14.5.

In both patient cases, the Board finds misrepresentations and deception by Respondent constituting violation of N.J.S.A. 45:1-21(b) and (e); repeatedly negligent or incompetent management, N.J.S.A. 45:1-21(d); and failure to prepare a proper patient record, N.J.S.A. 45:1-21(h) and N.J.A.C. 13:35-6.5. (See also now N.J.A.C. 13:35-7.1.) For good cause shown,

IT IS ON THIS DAY OF *Nov* 12, 1986;

ORDERED:

1. Respondent shall pay within 10 days of the entry of this Order investigative costs of \$3,883 and

2. Respondent shall reimburse to Mr. K.B. \$50 and to Mr. RMR \$771.40 and \$170. to Medicare.

3. Respondent's license to practice chiropractic in this State is hereby suspended for two years. The first two months of the suspension shall be an active suspension and the remainder shall be stayed as a period of probation on condition that:

(1) prior to commencement of probationary practice, respondent shall have commenced a Board-approved course in X-ray technique, and (2) he shall submit proof acceptable to the Board of satisfactory completion and attainment of a passing grade in the course; and (3) he has completed payment of costs and patient reimbursement.

THIS ORDER SHALL BE EFFECTIVE AS OF DECEMBER 1, 1986.

STATE BOARD OF MEDICAL EXAMINERS

By Edward W. Luka, M.D.
President

I DENY ANY WILLFUL VIOLATION
OF THE CHIROPRACTIC ACT. I DO
NOT AGREE WITH THE PATIENTS
VERSION OF THE FACTS. I CONSENT
TO THE ENTRY OF THE WITHIN ORDER
FOR THE PURPOSE OF SETTLEMENT.

Martin Riccio, D.C.
Martin Riccio, D.C.

Date: NOV 3, 1986